

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

ELLSWORTH INDUSTRIAL PARK SITE
DOWNERS GROVE, ILLINOIS

ADMINISTRATIVE ORDER BY
CONSENT PURSUANT TO
SECTIONS 104, 107 AND 122 OF CERCLA

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No.
)	
ELLSWORTH INDUSTRIAL PARK SITE)	ADMINISTRATIVE ORDER BY
)	CONSENT PURSUANT TO
DOWNERS GROVE, ILLINOIS)	SECTIONS 104, 107 & 122 OF THE
)	COMPREHENSIVE ENVIRONMENTAL
Respondents:)	RESPONSE, COMPENSATION, AND
)	LIABILITY ACT, as amended,
Listed in Attachment A)	42 U.S.C. §§ 9604, 9607 and
)	9622

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order by Consent (the "Order") is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondents. The Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order requires the Respondents to conduct a Remedial Investigation and Feasibility Study ("RI/FS") to investigate the nature and extent of contamination at the Ellsworth Industrial Park Site in Downers Grove, Illinois (the "Site"), which is generally depicted in figure A, and develop and evaluate potential remedial alternatives. The RI/FS shall evaluate response actions consistent with 40 CFR Part 300.430, to address the environmental concerns in connection with the areas of contamination located within and surrounding the Site. Remedial action(s) selected through the RI/FS process will be implemented pursuant to a Record of Decision to be issued by U.S. EPA.

A copy of this Order will also be provided to the State of Illinois, which has been notified of the issuance of this Order. The U.S. EPA has also notified the Federal Natural Resource trustees of the negotiations in this action pursuant to the requirements of Section 122(j) of CERCLA.

The Respondents agree to undertake all actions required by the terms and conditions of this Order. Respondents consent to and will not contest or legally challenge the U.S. EPA's authority or

jurisdiction to issue or enforce this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that in a proceeding to enforce the terms of this Order, they will not contest the basis or validity of this Order or its terms. Respondents' participation in this Order shall not constitute an admission of liability or of U.S. EPA's Findings of Fact or Conclusions of Law and Determinations contained in this Order except in a proceeding to enforce the terms of this Order.

II. PARTIES BOUND

This Order applies to and is binding upon U.S. EPA and upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order, and comply with this Order. Respondents shall be responsible for any noncompliance with this Order. Respondents shall file a copy of this Order with the local Recorder of Deeds.

III. STATEMENT OF PURPOSE

In entering into this Order, the objectives of U.S. EPA and the Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site or facility, by conducting a feasibility study; and (c) to provide for the recovery of response and oversight costs incurred by U.S. EPA with respect to this Order.

IV. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, and, for purposes of enforceability of this Order only, the Respondents stipulate that the factual statutory prerequisites under CERCLA necessary for

issuance of this Order have been met. U.S. EPA's findings and this stipulation include the following:

1. The Site is located on approximately 1,000 acres in Downers Grove, Illinois. The approximate borders of the Site are the Burlington Northern Santa Fe ("BNSF") railroad tracks on the north, Belmont Road on the east, Maple Avenue on the south, and I-355 on the west. St. Joseph's Creek runs through the northern end of the Site. A map depicting the general location of the Site is appended as Attachment B.
2. The Site was developed as an industrial park beginning in the early 1960s. Prior to that development, the property was used as farmland. The industrial park is now surrounded by residential development.
3. Respondents are present or past owners and/or operators of industrial properties at the Site.
4. Respondents have used solvents containing volatile organic compounds ("VOCs") in their plant operations, and releases of VOCs have been detected or are suspected at those properties.
5. Soil and groundwater sampling results obtained during Site investigations by U.S. EPA and the Illinois Environmental Protection Agency ("IEPA") identified high levels of the VOCs trichloroethylene ("TCE") and tetrachloroethylene ("PCE") in soil and groundwater at the Site. Sampling data collected by IEPA also indicates that TCE and PCE contamination from the Site has migrated to hundreds of drinking water wells located to the south and east of the Site. These results are summarized in a report dated August 2002, prepared for U.S. EPA by Weston Solutions, Inc.
6. The State of Illinois has indicated its intention to propose this Site for listing on the National Priorities List.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record in this matter, U.S. EPA has determined that:

1. The Ellsworth Industrial Park Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. TCE and PCE are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Each Respondent is a person who either allegedly generated the hazardous substances found at the Site, is a person who at the time of disposal of any hazardous substances owned or operated the Site, or is a person who arranged for disposal or transport for disposal of hazardous substances at the Site. Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The presence of hazardous substances at the Site or the past, and present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" of hazardous substances from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the National Contingency Plan ("NCP") and CERCLA.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that each Respondent shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

1. Designation of Contractors, Project Coordinator and Remedial Project Manager

Within 30 days of the effective date of this Order, and before the work outlined below begins, the Respondents shall notify U.S. EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. With respect to any proposed contractor, the Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as

determined by U.S. EPA. U.S. EPA retains the right to disapprove of the persons undertaking the work for Respondents. If U.S. EPA disapproves in writing a selected contractor, subcontractor, consultant or laboratory, Respondents shall retain replacement(s) and shall notify U.S. EPA of the identity and qualifications of the replacement(s) within 14 days of the written notice. If U.S. EPA subsequently disapproves of the replacement(s), U.S. EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify U.S. EPA in writing of any changes or additions in the contractors, subcontractors, consultants or laboratories used to carry out such work, providing their names, titles, and qualifications. U.S. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

Within 10 calendar days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 14 calendar days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 14 calendar days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by all Respondents.

The U.S. EPA has designated Mazin Enwiya of the Remedial Response Branch, Region 5, as its Remedial Project Manager ("RPM"). Respondents shall direct all submissions required by this Order to the RPM along with the required copies in accordance with Section XIX (Submittals/Correspondence). All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

U.S. EPA and Respondents shall have the right, subject to the immediately preceding paragraph, to change their designated RPM or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within 4 calendar days of oral notification.

2. Work to Be Performed

Respondents shall develop and submit to U.S. EPA and the Illinois EPA ("IEPA") an RI report, an FS report, and all other deliverables in accordance with the attached Statement of Work ("SOW"). The SOW is incorporated into and made an enforceable part of this Order. All areas at the Site, and all areas where hazardous substances, pollutants or contaminants from the Site have migrated or have been come to be located, will be subject to the RI/FS process.

All activities performed by Respondents under this Order shall be conducted in accordance with CERCLA, the NCP, and U.S. EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and guidances referenced therein, and guidances referenced in the Statement of Work, as may be amended or modified by U.S. EPA.

2.1 RI/FS Work Plan

Within 120 calendar days of the effective date of this Order, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft RI/FS work plan that is consistent with this Order and the SOW.

Upon approval by U.S. EPA (in consultation with IEPA), Respondents shall implement all activities required by the RI/FS Work Plan in accordance with the approved schedules. Respondents shall not commence or undertake any sampling activities either on or off-Site without prior U.S. EPA approval.

2.1.1 Health and Safety Plan

As part of the RI/FS work plan, the Respondents shall submit for U.S. EPA review and comment (in consultation with IEPA) a plan that ensures the protection of the public health and safety during performance of work under this Order. The plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the RI/FS.

2.1.2 Quality Assurance and Sampling

As part of the RI/FS work plan, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a sampling and analysis plan. This plan shall consist of a field sampling

plan, a data management plan, and a quality assurance project plan as described in the SOW and U.S. EPA guidances. The Respondents shall ensure that all sampling and analyses performed pursuant to this Order conforms to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratories used to perform the analyses participate in a QA/QC program that complies with U.S. EPA guidance, including ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans" (QA/R-2) (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

Upon approval by U.S. EPA (in consultation with IEPA), Respondents shall implement the sampling and analysis plan.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondents shall allow U.S. EPA, IEPA, or their authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify U.S. EPA and IEPA not less than 14 calendar days in advance of any sample collection activity. U.S. EPA and IEPA shall have the right to take any additional samples that they deem necessary.

2.2 RI Report

The RI Report will be developed in three primary phases: the Phase I Technical Memorandum, the Phase II Technical Memorandum, and the Risk Assessment Report.

2.2.1 Phase I Technical Memorandum

Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Phase I Technical Memorandum, in accordance with the schedule contained in the SOW. The Phase I Technical Memorandum shall present the results of the site characterization activities as described in the SOW.

2.2.2 Phase II Technical Memorandum

Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Phase II Technical Memorandum, in accordance with the schedule contained in the SOW. The Phase II Technical Memorandum shall present the results of the Phase II Migration Pathway Assessment activities as described in the SOW.

2.2.3 Risk Assessment Report

Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Risk Assessment Report, in accordance with the schedule contained in the SOW. The Risk Assessment Report shall evaluate both ecological risks and human health risks and shall present the results of the Risk Assessment activities as described in the SOW.

2.2.4 Final RI Report

Within 45 calendar days after approval of the Risk Assessment Report, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft RI Report that is consistent with this Order and the SOW.

The draft RI report and all revisions thereto shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Report, the information submitted is true, accurate, and complete.

2.2.5 Interim Actions

In developing the RI, to the extent possible, Respondents shall also identify and evaluate potential interim response activities that may be implemented to reduce or eliminate human exposures to contamination at or from the Site prior to completion of the RI. Such response activities shall be discussed in the Phase II Technical Memorandum, and Respondents may propose to implement such activities pursuant to section VI.2.5 of this Order.

2.3 FS Report

Within 60 calendar days after written approval of the RI report or upon such alternative time as requested by Respondents and approved by U.S. EPA, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft FS Report that is consistent with this Order and the SOW. The FS Report will be developed in three primary phases: the Remedial Alternatives Technical Memorandum, the Remedial Alternatives Evaluation, and the draft FS Report.

2.3.1 Remedial Alternatives Technical Memorandum

Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Remedial Alternatives Technical Memorandum, in accordance with the schedule contained in the SOW. The Remedial Alternatives Technical Memorandum shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. Respondents shall identify remedial action objectives, summarize the development and screening of remedial alternatives, and include an alternatives array document as described in the SOW.

2.3.2 Remedial Alternatives Evaluation

Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Remedial Alternatives Evaluation, in accordance with the schedule contained in the SOW. The Remedial Alternatives Evaluation shall summarize the results of the comparative analysis performed between the remedial alternatives and present the results of all treatability studies performed, as described in the SOW.

2.3.3 Final FS Report

Within 45 calendar days after approval of the RI Report, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft FS Report that is consistent with this Order and the SOW.

The draft FS report and all revisions thereto shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Report, the information submitted is true, accurate, and complete.

Respondents shall not commence or undertake any remedial actions at the Site without prior U.S. EPA approval.

2.4 Reporting

Respondents shall submit a monthly written progress report to U.S. EPA and IEPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the effective date of this Order, until termination of this Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Respondent(s) shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at U.S. EPA's discretion.

Any Respondent that owns any portion of the Site shall, at least 30 calendar days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and IEPA. The notice to U.S. EPA and IEPA shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section VI.3. (Access to Property and Information).

2.5 Additional Work

In the event that the U.S. EPA or the Respondents determine that additional work is necessary to accomplish the objectives of the RI/FS, notification of such additional work shall be provided to the other parties in writing. Any additional work which Respondents determine to be necessary shall be subject to U.S. EPA's written approval (in consultation with IEPA) prior to commencement of the additional work. Respondents shall complete, in accordance with standards, specifications, and schedules U.S. EPA has approved, any additional work Respondents have proposed, and which U.S. EPA has approved in writing or that U.S. EPA has determined to be necessary, and has provided written notice of pursuant to this paragraph. Subject to Dispute Resolution as provided in Section IX, Respondents shall implement the additional tasks that U.S. EPA determines are necessary.

2.6 EPA Approval of Plans and other Submissions

U.S. EPA (in consultation with IEPA) may approve, disapprove, require revisions to, or modify any draft work plan, report or other submission from Respondents required under this Section to conform said work plan, report or submission to the requirements of the SOW, the approved RI/FS Workplan, or the RI/FS Guidance. If U.S. EPA requires revisions, Respondents shall submit a revised submission incorporating all of U.S. EPA's required revisions within 21 calendar days of receipt of U.S. EPA's notification of the required revisions.

Upon receipt of a written notice of disapproval of a work plan, report or other submission, Respondents shall, within 30 days or such longer time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the document. Any stipulated penalties applicable to the submission, as provided in Section XI, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect. In the event of U.S. EPA disapproval of a revised submittal, Respondents may be deemed in violation of this Order. If Respondents are deemed in violation of this Order, U.S. EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; to terminate this Order; and/or seek any other appropriate relief.

Alternatively, U.S. EPA may again require the Respondents to correct the deficiencies, in accordance with the preceding Paragraphs. U.S. EPA also retains the right to modify or develop work plan, report or other submission. Respondents shall implement any such work plan, report or other submission as modified or developed by U.S. EPA consistent with the SOW, subject only to their right to invoke the dispute resolution process as set forth in Section IX.

In the event that a resubmitted document is disapproved by U.S. EPA, Respondents shall be deemed to have failed to submit the submission timely and adequately unless Respondents invoke the dispute resolution procedures set forth in Section IX and U.S. EPA's action is overturned pursuant to that Section. The provisions of Sections IX and XI shall govern the implementation of the Order and accrual and payment of any stipulated penalties during Dispute Resolution.

Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed, at the direction of U.S. EPA, to take any action required by any non-deficient portion of the relevant submission. Implementation of any non-deficient portion of a

submission shall not relieve Respondents of any liability for stipulated penalties under Section XI.

For all remaining deliverables not enumerated above in Sections 2.1-2.3 and 2.5, Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting U.S. EPA approval on the submitted deliverable. U.S. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

2.7 Community Relations and Technical Assistance Plan

U.S. EPA will prepare a Community Relations Plan, in cooperation with IEPA and in accordance with U.S. EPA guidance and the NCP. Respondents shall provide information and conduct other activities as requested by U.S. EPA to support community relations programs. If a community group requests funding for technical assistance, within 30 days after notification by U.S. EPA of such a request, Respondents shall prepare a Technical Assistance Plan. The Technical Assistance Plan shall provide for funding and administration of \$50,000 in funds provided by Respondents to be used by selected qualified representatives of the community for the purpose of providing technical assistance during the response activities conducted under this Order at the Site and through U.S. EPA's issuance of the Record of Decision ("ROD") based on the RI/FS conducted pursuant to this Order. Respondents will provide and administer any additional amounts needed if the selected qualified community group demonstrates such a need (under the standards provided in 40 C.F.R. §35.4065) prior to U.S. EPA's issuance of a ROD for this Site.

3. Access to Property and Information

Respondents shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA, IEPA, and their employees, contractors, agents, consultants, designees, representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas to which Respondents has access in order to conduct actions which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA and IEPA, upon receipt, the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Order.

Where work or action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 calendar days after the effective date

of this Order, or as otherwise specified in writing by the RPM. Respondents shall notify U.S. EPA within 4 calendar days if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may, in its discretion, then assist Respondents in gaining access, to the extent necessary to effectuate the actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information in their possession relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the actions required by this Order. At the end of this six year period and at least 60 calendar days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondents shall provide copies of any such non-privileged documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA.

If Respondents assert a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

5. Off-Site Shipments

Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

6. Compliance With Other Laws

Respondents shall perform all activities required pursuant to this Order in accordance with all the requirements of all federal and state laws and regulations. U.S. EPA has determined that the activities required by this Order are consistent with the NCP.

Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the activities conducted entirely on-site. Where any portion of the activities is to be conducted off-site and requires a federal or state permit or approval, the Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the RPM or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondents fail to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

Respondents shall submit a written report to U.S. EPA within 10 calendar days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VII. AUTHORITY OF THE U.S. EPA REMEDIAL PROJECT MANAGER

The RPM shall be responsible for overseeing the implementation of this Order. The RPM shall have the authority vested in an RPM and an On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any activities required by this Order, or to direct any other response action undertaken by U.S. EPA or

Respondents at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

VIII. REIMBURSEMENT OF COSTS

Respondents shall pay all Oversight Costs of the United States related to the Site that are not inconsistent with the NCP.

U.S. EPA will send Respondents a bill for Oversight Costs on an annual basis. The bill shall consist of an Itemized Costs Summary. "Oversight Costs" are all costs paid by U.S. EPA after the effective date of this Order relating to this Order, including, but not limited to direct and indirect costs related to overseeing work performed under this Order, and reviewing or developing plans, reports and other items pursuant to this Order.

Respondents shall, within 45 calendar days of receipt of a bill from U.S. EPA, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Program Accounting and Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Ellsworth Industrial Park Site" and shall reference the payor(')s(') name and address, the U.S. EPA site identification number B52A, and the docket number of this Order.

The total amount to be paid by Respondents under this Section shall be deposited in the Ellsworth Industrial Park Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondents' receipt of the bill (or for Past Response Costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to

the United States by virtue of Respondents' failure to make timely payments under this Section.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the RPM. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

IX. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondents object to any U.S. EPA action taken pursuant to this Order, including billings for response costs, the Respondents shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) has (have) been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which the Respondents rely (hereinafter the "Statement of Position").

U.S. EPA and Respondents shall within 15 calendar days of U.S. EPA's receipt of the Respondents' Statement of Position, attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period of 15 calendar days may be extended at the sole discretion of U.S. EPA. U.S. EPA's decision regarding an extension of the Negotiation Period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period the Director of

the U.S. EPA Superfund Division, Region 5, will issue a written decision on the dispute to the Respondents. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Order upon Respondents' receipt of the decision regarding the dispute.

Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

X. FORCE MAJEURE

Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondents that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work, increased cost of performance, or normal weather events.

Respondents shall notify U.S. EPA orally within 24 hours after Respondents become aware of any event that Respondents contend constitute a force majeure, and in writing within 7 calendar days after Respondents become aware of any events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delays. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay to the satisfaction of U.S. EPA.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks

required by the Order which are not directly affected by the force majeure.

XI. STIPULATED AND STATUTORY PENALTIES

For each calendar day, or portion thereof, that Respondents fail to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondents shall be liable as follows:

<u>Deliverable/Activity</u>	<u>Penalty For Days 1-7</u>	<u>Penalty For > 7 Days</u>
Failure to Submit a Draft work plan or RI or FS Report	\$500/Day	\$1250/Day
Failure to Submit a revised work plan or RI or FS Report	\$500/Day	\$1250/Day
Failure to Submit a Data Report or Technical Memorandum	\$500/Day	\$1,000/Day
Late Submittal of Progress Reports or Other Miscellaneous Reports/Submittals	\$250/Day	\$ 500/Day
Failure to Meet any Scheduled Deadline in the Order	\$250/Day	\$ 500/Day

Upon receipt of written demand by U.S. EPA, Respondents shall make payment to U.S. EPA within 20 calendar days and interest shall accrue on late payments in accordance with Section VIII of this Order ("Reimbursement of Costs").

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation(s) to complete the performance of the work required under this Order. Stipulated

penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

The stipulated penalties set forth above shall not be the sole or exclusive remedy for violations of this Order and shall not preclude U.S. EPA from pursuing any other remedy or sanctions which are available to the agencies because of the Respondents' failure to comply with this Consent Order. Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out all or part of the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §§ 9604. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Consent Order.

XII. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or oil or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. U.S. EPA reserves its rights in regard to claims, prior actions, orders, or agreements with Respondents. The covenant not to sue by U.S. EPA set forth in Section XIV does not pertain to any matters other than those expressly identified therein. The United States and U.S. EPA reserve, and this Agreement is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to:

- a. liability for failure of Respondents to meet a requirement of this Order by Consent;
- b. liability for costs incurred or to be incurred that are not Oversight Costs as defined in Section VII of this Order;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, excluding work performed under the terms of this Order;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

XIII. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIV (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIV. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XVIII (Notice of Completion), U.S. EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the Oversight Costs specified in Section VIII of this Order, U.S. EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of Oversight Costs incurred by the United States in connection with this action or this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VIII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

XV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties to this Order from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XVI. INDEMNIFICATION

Respondents agree to indemnify, save and hold harmless the United States their agencies, departments, officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents and Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays; and (C) for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA including oversight, modification and/or approval of plans or activities of the Respondents. The U.S. EPA shall not be construed to be a party to any contract involving the Respondents at the Site.

XVII. MODIFICATIONS

Except as otherwise specified in Section VI.2. (Work To Be Performed), if any party believes modifications to any plan or schedule are necessary during the course of this project, they shall conduct informal discussions regarding such modifications with the other parties. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within 10 calendar days; however, the effective date of the modification shall be the date of the RPM's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties. Any modification to this Order shall be incorporated into and made an enforceable part of this Order.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval (in consultation with IEPA) outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XVIII. NOTICE OF COMPLETION

When U.S. EPA determines that all work, including the RI and FS Reports, has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents.

XIX. SUBMITTALS/CORRESPONDENCE

Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Order, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile in accordance with this section.

Correspondence and communications from U.S. EPA and IEPA shall be addressed to:

[insert names]

Three copies of all correspondence, communication, and submittals from Respondents shall be directed to the following, and additional copies to other individuals he may identify:

Mazin M. Enwiya
Remedial Project Manager
United States Environmental Protection Agency
77 West Jackson Blvd., Mailcode SR-6J
Chicago, Illinois 60604-3590
Phone (312) 353-8414
FAX (312) 353-5541
Email "enwiya.mazin@epa.gov"

Two copies of all correspondence, communication, and submittals from Respondents shall be directed to the following, and additional copies to other individuals he may identify:

Fred W. Nika, Jr.
Remedial Project Manager
Illinois Environmental Protection Agency
Division of Remediation Management
1021 North Grand Avenue East
Springfield, Illinois 62702
Phone (217) 782-3983
FAX (217) 782-3258
E-mail "epa4217@epa.state.il.us"

One copy of all correspondence, communication, and submittals from Respondents shall be directed to:

Thomas Krueger
Associate Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard, C-14J
Chicago, Illinois 606064-3590
Phone (312) 886-4273
FAX (312) 886-0747
E-mail "krueger.thomas@epa.gov"

XX. SEVERABILITY

If a court of competent jurisdiction issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXI. FINANCIAL ASSURANCE AND INSURANCE

Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to U.S. EPA, funded sufficiently to perform the work and any other obligations required under this Order, including a margin for cost overruns.

Within 15 days after the effective date of this Order, Respondents shall fund the financial instrument or trust account sufficiently to perform the work required under this Order projected for the period beginning with the effective date of the Order through December 31, 2003. Beginning December 15 2003, and on or before the 15th calendar day of each calendar year quarter thereafter, Respondents shall fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Order projected for the succeeding calendar year quarter.

If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other obligations under the Order for the upcoming quarter, Respondents shall provide written notice to U.S. EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

Prior to commencement of any work under this Order, Respondents shall secure, and shall maintain in force for the duration of this Order, and for two years after the completion of all activities required by this Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$2 million dollars, combined single limit, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of \$_____ per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

Respondents shall also secure, and maintain in force for the duration of this Order and for two years after the completion of all activities required by this Consent Order the following:

- A. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.
- B. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

For the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondents, in furtherance of this Order.

If Respondents demonstrate by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance

equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

Prior to commencement of any work under this Order, and annually thereafter on the anniversary of the effective date of this Order, Respondents shall provide to U.S. EPA certificates of such insurance and a copy of each insurance policy.

At least 7 days prior to commencing any work under this Order, Respondents shall certify to U.S. EPA that the required insurance has been obtained by that contractor.

XXI. EFFECTIVE DATE AND COMPUTATION OF TIME

This Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5. For the purposes of this Order, the term "day" shall mean a calendar day. In computing any period of time under this Order, where the last day of the period would fall on a Saturday or Sunday, the period shall run until noon, Central Time of the following Monday.

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this _____ day of _____, 2002.

By _____

By _____

By _____

IT IS SO ORDERED AND AGREED

BY: _____
William E. Muno, Director
Superfund Division United States
Environmental Protection Agency
Region 5

DATE: _____

ATTACHMENT A

To be developed

ATTACHMENT B

To be developed